

Application No. 10/705, 248

Attorney Docket No. 503 US

REMARKS**I. STATUS OF CLAIMS**

Claims 20 – 33 are currently pending. Claims 1 – 19 have been withdrawn, but Applicants expressly reserve all rights with regards to filing a divisional application directed to the withdrawn claims and related subject matter.

Claims 20 and 23 have been amended, without prejudice, to more clearly set forth the subject matter of the invention. In particular, the nonwoven layer is now described as “creped”, and the elastic layer is now described as “uncreped”. Support for this amendment can be found, for example, in Figure 6. Applicants believe that these amendments place the application in better condition for allowance.

No new matter has been added.

II. DOUBLE PATENTING REJECTION

The Office has provisionally rejected claims 20 – 33 on the grounds of nonstatutory obviousness-type double patenting in view of claims 1, 4, 5, 6, 30, and 31 of co-pending Application No. 10/807,409.

On December 28, 2005, Applicants filed a terminal disclaimer disclaiming the terminal portion of any patent granted on Application No. 10/807,409 beyond the expiration date of such a patent. This terminal disclaimer was rejected by the Office because it improperly identified the ‘409 application’s filing date.

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Applicants will consider re-filing a terminal disclaimer directed to the '409 application, with a corrected filing date, in the event that the Office finds the pending claims of the present application otherwise allowable.

III. PRIOR ART REJECTIONS

The Office has rejected claims 20 – 22 under 35 U.S.C. § 102(b) as being anticipated by, or in the alternative under 35 U.S.C. § 103(a) as being obvious over, US 6,114,595 (Moore). Specifically, the Office asserts that Moore teaches a laminate having all of the claimed elements, except the claimed elongation at break value or induced extensibility value. The Office presumes, however, that such properties are inherent to the laminate taught by Moore.

The Office has further rejected claims 20 – 33 under 35 U.S.C. § 103(a) as being obvious over US 6,106,925 (Palumbo) in view of US 2004/0102125 (Morman). The Office asserts that Palumbo discloses the claimed invention except that it does not teach the application of an adhesive to the “high points” of the nonwoven layer or order to bond this layer to the perforated elastic layer. However, the Office further asserts that since Morman teaches the selective attachment of a nonwoven material to an elastomeric film by a plurality of intermittent adhesive dots, it would have been obvious to use such dots to bond together the layers taught by Palumbo. Moreover, the Office concludes that “once heat and pressure have been applied to the laminate, one skilled in the art would not know the difference as to whether the adhesive is on the ‘high points’ or the ‘low points’ of the nonwoven layer.”

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A. CLAIMED INVENTION:

Applicants have discovered that a creped nonwoven web can be bonded to a two- or three-dimensional perforated elastic film to produce a laminated composite that is highly elastic. In particular, creping of the nonwoven web is believed to provide an otherwise nonextensible nonwoven web with extensibility in the direction of the creping. Without such creping, the nonwoven must be activated in order for the resulting composite to elongate. Unfortunately, the activation process stretches the nonwoven in one or more directions thereby modifying its micro and macro structures. The composites of the claimed invention are also advantageous in that they allow for cold drawing without appreciable tearing the laminate or nonwoven layers.

Another advantage of the claimed composites is that the creped nonwoven is bonded to the perforated elastomeric film at the high points of the creping. Such bonding allows for better retraction and recovery of the composite after stretching because the nonwoven and elastic layers of the composite are not pleated or nested together.

B. PRIOR ART REFERENCES**1. US 6,114,595 (Moore)**

Moore teaches a creped composite web formed by laminating a nonwoven web to an elastic film, and then creping the resulting laminate. Thus, both layers of the composite (i.e., the nonwoven web and the elastic film) are creped and are nested together. Since the composite is creped after the individual layers are bonded together, the bonding points between the two layers are formed irrespective of any high and low

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points of the nonwoven crepe. According to Moore, the composite exhibits fine scale nesting or pleating of the elastic layer and the nonwoven layer in microfolds which provide intimate contact between the nonwoven and elastic layers – purportedly to enhance fluid transport properties of the composite.

2. US 6,106,925 (Palumbo)

Palumbo discloses a perforated coversheet having an upper and lower nonwoven layer and an intermediate elastic layer between the nonwoven layers, wherein the upper and lower layers are only bonded to intermediate layer around the perimeter of the perforations. Thus, the bonding between the film and the nonwoven web only occurs at the edges of the perforations. Purportedly, the effect of this limited bonding arrangement is that the elastic film is able to continue to manifest its elasticity in a direction transverse to the orientation of the fibers of the web.

3. US 2004/0102125 (Morman)

Morman discloses an extensible laminate wherein a nonwoven material is selectively attached to a non-apertured elastomeric film by both intermittent adhesive bonds and thermal point bonds. The thermal point bonds are used to increase the non-bonding areas between the layers (thus purportedly increasing the extensibility of the laminate), while the adhesive bonds are used so that the laminate is subjected to less heat (thus purportedly improving softness and loft).

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C. ARGUMENTS

- 1. Moore does not set forth, either explicitly or implicitly, each and every limitation of the claimed invention.**

Moore fails to disclose a composite having a nonwoven layer and an elastic layer wherein the elastic layer is bonded to high points of the extensible nonwoven layer. In addition, Moore fails to disclose a composite comprising an uncreped elastic layer. It is incontrovertible that a reference anticipates a claim only if the reference discloses, either explicitly or implicitly, each and every element of the claim. MPEP 2131. Moreover, to establish a *prima facie* showing of obviousness, the cited reference, or combination of references, must include each and every limitation of the claimed invention. MPEP 2143. Here, the cited reference clearly fails to show at least two elements of the currently amended claims.

As described above, Moore does not teach, or even suggest, a composite having an uncreped elastomeric film. To the contrary, the nonwoven/elastomeric composite of Moore specifies that the elastomeric film *is creped* so that it “nests” with nonwoven layer thereby providing intimate contact between the layers and, purportedly, enhanced fluid transport properties.

In contrast to the composites taught by Moore, the creped nonwoven and elastic layers of the claimed invention are bonded at the “high points” or peaks of the creped material, and thus are *not* nested together. Bonding the materials along the peaks of the creped material allows for enhanced extensibility of the composite because the pleats of the crepe can more easily expand and retract.

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In view of the fact that Moore does not teach or suggest at least two elements of claims 20 – 22, these claims are neither anticipated by, nor obvious in view of, this reference. For at least these reasons, the Examiner's rejection is respectfully traversed.

2. The proposed modification to Palumbo would alter its principle of operation.

With respect to claims 20 – 33, the Office has proposed that Palumbo may be modified in view of Morman to arrive that the present invention, thus rendering the claimed invention obvious. However, according to MPEP 2143, if the proposed modification of combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.

As previously noted, Palumbo discloses a composite having an elastic layer disposed between two nonwoven webs. The three layers are simultaneously apertured and thermally bonded by perforation teeth on a roller. According to Palumbo, "bonding between the film and the webs the [sic] takes place *only* at the edges of the perforations." (emphasis added) Col. 3, lines 60 – 62. Since the bonding of the three layers occurs at the periphery of the aperture, the composite is relatively elastic despite its having nonwoven layers.

The Office states that "Palumbo discloses the claimed invention except for the teaching that an adhesive is used on the 'high points' of the nonwoven layer to the bond the nonwoven layer to the elastic perforated layer." Applicants disagree with this reading

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of Palumbo and further assert that the Office's purposed modification would change the principle of operation of the invention described in Palumbo.

Applicants respectfully point out that, in addition Palumbo's lack of teaching of "high point" bonding, the reference also has no teaching or suggestion whatsoever of a composite comprising a *creped* material. This distinction is important for at least the reason that elasticity of the claimed composite at least partially results from the creped structure of the nonwoven. In contrast to the composites of Palumbo (in which elasticity is achieved by limiting the nonwoven / elastic film bonding sites to the periphery of the apertures that traverse through the entire composite), the claimed composites achieve elasticity in part by bonding the nonwoven and elastic layers along the crepe's high points. Imparting this element on the composite of Palumbo would completely change its principle of operation. For at least this reason, the Office's rejection under § 103(a) is respectfully traversed.

3. The combination of Palumbo and Morman fail to disclose all of the claimed elements.

With respect to claims 20 – 33, neither Palumbo nor Morman teaches or suggests a composite having a nonwoven layer and an elastic layer wherein the elastic layer is bonded to high points of the extensible nonwoven layer; or such a composite having an uncreped elastic layer. As indicated above, the combination of cited references must include each and every element of the claimed invention in order to establish a *prima facie* case of obviousness.

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In the pending Office Action, the Examiner states that it is her position "that in the final product, once heat and pressure have been applied to the laminate, one having ordinary skill in the art would not know the difference as to whether the adhesive is on the 'high points' or the 'low points' of the nonwoven layer." Office Action, p. 5.

However, as described above, the claimed composite possesses high elasticity that is derived in part from its high point bonds. If the nonwoven were bonded to the elastic layer at the low points of the creping, the resulting composite would not be as elastic because the nonwoven web would be tethered to the elastic in a manner that would prevent the optimal unfolding (or stretching) of the creped structure. Thus, contrary to the Office's suggestion, one skilled in the art could distinguish between a composite with high point bonds vs. low point bonds because the elastic properties of the two composites would be different.

Since the combination of references does not teach all of the claimed elements and since composites having high point bonds are clearly distinct from composites having low point bonds, the Office's rejection under § 103(a) is respectfully traversed.


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IV. CONCLUSION

In view of the proposed claim amendments and the arguments presented above, the present application is believed to be in condition for allowance and an early notice thereof is earnestly solicited. The Office is invited to contact the undersigned counsel in order to further the prosecution of this application in any way.

Respectfully submitted,

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